

FUNDAMENTAL PRINCIPLES OF THE RIGHT TO WORK. PRINCIPLE OF FREEDOM OF WORK, PRINCIPLE OF PROHIBITION OF FORCED LABOUR AND PRINCIPLE OF FREEDOM OF WORKING ABROAD

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Abstract: *The present paper approaches three principles of the right to work between which there is a tight connection, namely the principle of freedom to work, the principle of prohibition of forced labour and the principle of freedom to work abroad.*

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1. General view on the theme

“We are very slightly inclined to commit the error to believe that a principle of law or of justice is a result of a pure speculation and that it would come into our mind before an experience... As a consequence, there can be no indisputable principles of law, valid for all times and places.” (prof. Mircea Djuvara)

Looking back into the history, we realise that prof. Mircea Djuvara resumes in a few, but very meaningful, words that any principle should be in accordance with the time and place of its application.

In the past, before the abolition of slavery, for instance, the prohibition of forced labour could not even have been taken into account, and there was no principle to ban it. But, as the law evolves in the same time with the society, the principles change, too, adapting to the times. This thing can be only cheerful, because, for a good development of the society, the principles cannot and must not be anachronical.

According to Article 3 of the Universal Declaration of Human Rights “everyone has the right to life, liberty and security of person”.

In accordance with Article 4 of the European Convention on Human Rights, paragraph 1, no one shall be held to perform forced or compulsory labour¹.

Thus, it can be noticed that the principle of freedom to work is consecrated both in its sources, the Universal Declaration of Human Rights, the European Convention on Human Rights, and in the Labour Code.

2. Freedom to work

Legally, the freedom to work implies the right of person to choose by himself/herself and freely his/her profession, if he/she works or not, where, for whom and in what conditions. It manifests itself through the conventional character of the forms of the labour legal report².

¹ As exception, we must mention the activities stipulated by Article 4 paragraph 3, which are not considered as forced or compulsory labour.

² A. Țiclea, *Dreptul muncii. Curs universitar*, Editura Universul Juridic, București, 2009, p. 42.

Article 3 of the Labour Code, paragraph 1, stipulates that the freedom to work is guaranteed by the Constitution. The right to work cannot be restricted. In this respect, it can be underlined the protection given to the freedom to work by the fundamental law of the state itself, the Constitution. Paragraph 2 of the present article has the following content: every person is free to choose his/her workplace and of profession, job or activity he/she is to perform.

Indirectly this paragraph emphasizes the principle of non-discrimination of the human being. This feature can be remarked because every person enjoys the freedom to choose his/her workplace and of profession, job or activity he/she is to perform.

Paragraph 3 implicitly results from the previous one: no one may be forced to work or not to work at a specific workplace or in a specific profession, whichever they may be.

The increased importance of the stipulations of the present article is pointed out by the sanction provided by paragraph 4 if these provisions are not respected, namely automatic nullity³.

3. Prohibition of forced labour

Article 3 of the Labour Code, which guarantees the freedom to work, implicitly excludes the forced labour. Nevertheless, in order to emphasize the importance given to this subject, the present article directly enshrines the prohibition of forced labour.

According to Article 4 paragraph 1 of the Labour Code, the forced labour is prohibited. Paragraph 2 of the same article defines the term of forced labour, namely: the term of forced labour designate any work or service imposed on a person under threat or for which the person did not freely express his/her consent.

As every rule has its exceptions, paragraph 3 regulates those situations in which the work imposed by the public authorities does not represent forced labour, namely: paragraph 3 (a) provides as exception the labour pursuant to the law on the compulsory military service; paragraph 3 (b) provides as exception the labour for the fulfilment of the civic duties established by law.

Another exception, worth being taken into consideration, is provided by paragraph 3 (c): the labour performed on the basis of a judicial conviction, which remained final, under the conditions of the law.

The situations provided by paragraph 3 (d) represent exceptions, too. In this situation, it must be mentioned the labour performed in case of an act of God, respectively in case of war, disasters or disaster danger, such as: fire, flood, earthquake, serious epidemic or epizootic, animal or insect invasions and, generally, in all circumstances threatening the life or the normal living conditions of the entire population or a part of it.

4. Freedom of working abroad

Article 9 of the Labour Code provides that the Romanian citizens are free to work in the Member States of the European Union, as well as in any other state, in compliance with the rules of the international labour law and bilateral treaties to which Romania is a party.

This principle is in total agreement with the principle of free movement of persons. With the accession of Romania to the European Union, this principle is practically valued.

The freedom to work allows Romanian citizens to perform a labour not only in Romania, but in any other state in the world, with priority in those of the European Union.

³ Article 3 paragraph 4 of the Labour Code: Any employment contract concluded in breach of the provisions of paragraphs (1) – (3) shall be null and void.

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3. European Convention on Human Rights.
4. Law no.53/2003 on the Labour Code.